



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
Adresa: Perandori Justinian, PN, Prishtinë
T: +381 (0)38 220 104; F: +381 (0)38 220 112; www.gjk-ks.org

Prishtina, 20 April 2010
Ref. no.: RK14 /10

RESOLUTION

Case No. Kl. 23/09,

Ahmet Arifaj
vs.
Municipality of Klina

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court composed of:

Enver Hasani, President
Kadri Kryeziu, Vice-President
Snezhana Botusharova, Judge
Robert Carolan, Judge
Ivan Čukalović, Judge
Iliriana Islami, Judge
Kadri Kryeziu, Judge
Gjylieta Mushkolaj, Judge
Almiro Rodrigues, Judge and
Altay Suroy, Judge

Applicant

1. The Applicant, Ahmet Arifaj, is residing in Klina.

Responding Party

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2. The Responding Party is the Municipality of Klina.

Subject matter

3. The Applicant complains that the Municipal Assembly of Klina issued an unfavorable decision for the compensation of property destroyed during the years 1998/99 in Kosovo.

Legal basis

4. Article. 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the proceedings before the Constitutional Court

5. The Applicant submitted his Referral to the Constitutional Court on 30 June 2009. On 18 February 2010, after having considered the Report of the Reporting Judge, Kadri Kryeziu, the Review Panel, composed of Judges Enver Hasani (Presiding), Gjylieta Mushkolaj and Iliriana Islami, forwarded its recommendation to the full Court to reject the case as inadmissible on the same day.

Facts

6. It appears from the documents submitted by the Applicant, that, on 22 September 2009, the Municipal Assembly of Klina rendered the decision Nr 01NR 351-3187-08 to reject the request of the Applicant for providing support to rebuild his house due to the lack of budgetary means.

7. The Applicant has not in any way challenged the decision issued by the Municipal Assembly of Klina. Instead he approached several institutions, such as the Ombudsperson Office in Kosovo, and asked them to exert pressure on Municipality Assembly of Klina to assist him to rebuild the house destroyed during the war.

Applicant's allegations

8. The Applicant complains that his right to compensation for the property destroyed during the war has been violated without specifying any particular provision of the Constitution.

Comments by the Responding Party

9. The Responding Party, the Municipal Assembly of Klina to which the Referral was communicated by the Court's Registry Office, replied to the Constitutional Court on 5 January 2010. In that reply the Mayor of Klina stated as follows "With regard to the specific case file the issue of post-war emergency rebuilding was mainly dealt with

by non-governmental organizations of various states, which had their own budgets and also had the parties' request and other materials for rebuilding houses. Therefore, we as a municipality had no access or the possibility of preparing priority lists for the beneficiaries."

Assessment of the Admissibility of the Referral

10. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution.

11. In this connection, the Court refers to Article 113.7 of the Constitution, which provides:

"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law";

and to Article 47.2 of the Law, stipulating that:

"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law."

12. The Constitutional Court notes, however, that in his Referral, the Applicant has not submitted any evidence whatsoever, that he challenged decision issued on 22 September 2009 by the Municipal Assembly of Klina under No. Nr 01NR 351-3187-08.

13. As indicated in Case No. KI.41/09, AAB-RIINVEST University vs. the Government of the Republic of Kosovo (Resolution Nr. RK-04/10 of the Constitutional Court of the Republic of Kosovo, dated 27 January 2010), the Court wishes to emphasize that the rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (see, *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, *mutatis mutandis*, ECHR, *Azinas v. Cyprus*, no. 56679/00, decision of 28 April 2004).

14. In this connection, the Constitutional Court would like to stress that applicants are only required to exhaust remedies that are available and effective. Discretionary or extraordinary remedies need not to be exhausted, for example requesting a court to revise its decision (see, *mutatis mutandis*, ECHR, *Cinar v. Turkey*, no 28602/95, decision of 13 November 2003). Where an applicant has tried a remedy that the Court considers inappropriate, the time taken to do so will not interrupt the running of the four-month time limit (Art. 49 "Deadlines" of the Law), which may lead to the

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complaint being rejected as out of time (see, mutatis mutandis, ECHR, *Prystavka, Rezgui v. France*, no 49859/99, decision of 7 November 2000).

15. As to the present case, the Applicant submitted his constitutional complaint directly to this Court, arguing that his right to the compensation for the destroyed property had been violated, without invoking any Article of the Constitution or of the European Convention of Human Rights and Fundamental Freedoms.

16. Furthermore, Law No. 02/L-28 on the Administrative Procedure of 22 July 2005, in its Section IX, provides that "Any interested party has a right to appeal against an administrative act or against an unlawful refusal to issue an administrative act" (Article 127.2), while "The administrative body, the appeal is addressed to, shall review the legality and consistency of the challenged act" (Article 127.3). Moreover, the Law provides that "The interested parties may address the court only after they have exhausted all the administrative remedies of appeal" (Article 127.4).

17. However, in his submissions, the Applicant has not substantiated in whatever manner, why he considers that the legal remedies, mentioned in Law No. 02/L-28 on the Administrative Procedure, including an appeal to the regular courts, would not be available and, if available, would not be effective and, therefore, not need to be exhausted.

18. In these circumstances, the Applicant cannot be considered to have fulfilled the requirements under Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Article 55 of the Rules of Procedure, unanimously,

DECIDES

I. TO REJECT the Referral as inadmissible.

II. This Decision shall be notified to the Parties and shall be published in the Official

Gazette, in accordance with Article 20.4 of the Law.

III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Mr.Sc.Kadri Kryeziu

Prof. dr. Enver Hasani

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